

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS PANEL

SECRETARY OF STATE
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AUDITORIUM
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Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrel

Mr. John Mott-Smith

Ms. Caren Daniels-Meade

Mr. Tony Miller

STAFF

Ms. Dawn Mehlhaff

Mr. Michael Wagaman

Mr. Steven Freeman

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1 PROCEEDINGS

2 CHAIRPERSON KYLE: Good afternoon. My name is
3 Mark Kyle, the Undersecretary of State and Chair of the
4 Voting Systems and Procedures Panel. I would like to
5 welcome all of you here this afternoon.

6 I think we have agendas and speaking cards up at
7 the top, and copies of the staff report are being made now;
8 is that correct, staff?

9 MS. MEHLHAFF: Yes.

10 CHAIRPERSON KYLE: Okay. So sorry for the delay
11 on that. And anyone who would like to speak on either of
12 the two agenda items, then please take a card and bring it
13 forward and we'll sort them out and give everyone a chance
14 to speak today.

15 So we're going to wait for Marc Carrel to return
16 for a second. And before we get started, the main agenda
17 item for the day is the submission of a ranked-choice voting
18 for San Francisco County by Election Systems & Software.

19 Do we have representatives of the City and County
20 of San Francisco here? Okay, Mr. Arnst, welcome.

21 Do we have representatives of ES&S here? Okay,
22 thank you, welcome.

23 Maybe you have some testimony, maybe not, and so
24 if necessary. And then obviously we welcome public comments
25 from any and all of those who are interested.

1 So since we now have Marc Carrel back and a quorum
2 of the Voting Systems and Procedures Panel, I'd like to ask
3 the staff to make a presentation on the submission for
4 ranked-choice voting for the City and County of San
5 Francisco.

6 MS. MEHLHAFF: Okay. Before we begin, I just want
7 to introduce Mr. Steve Freeman who is also here today for
8 your technical questions.

9 CHAIRPERSON KYLE: Thank you very much, Ms.
10 Mehlhaff. Thank you for being here, Steve.

11 MS. MEHLHAFF: The application before you today
12 includes hardware, firmware, software, and procedures that
13 were developed by ES&S for use with the Optech Eagle, which
14 is a precinct scanner; the Optech IV-C Model 400, which is a
15 central count scanner; and the Unity software suite to
16 capture, read, interpret, record, enter, tally, tabulate,
17 and summarize ranked-choice votes for use in the City and
18 County of San Francisco. This is specific to that one
19 jurisdiction.

20 These procedures and these modifications were
21 developed according to the charter and then passed by the
22 voters of San Francisco in March of 2002.

23 The summary of the system, I'm just going to kind
24 of lay this out, I know you've all read the staff report, so
25 I won't go into detail in terms of voters and numbers and

1 those items, unless you specifically ask for it.

2 And the modifications before you today were made
3 to a legacy system. Let me give you some history on that.
4 It originally belonged to a company called BRC Business
5 Records Corporation and ES&S was formed, it was a merger
6 with that company. ES&S retained the right to support the
7 systems that were installed with the current BRC customers
8 in California, but full technology rights to the Optech
9 design were given to Sequoia Voting Systems in a United
10 States Department of Justice decision.

11 At the current time, the only listed federal
12 qualification of the Optech equipment belongs to Sequoia
13 Voting Systems, which are different from the ES&S models
14 currently before you.

15 ES&S has claimed federal qualification under BRC's
16 old qualification numbers for the Optech Eagle, which has a
17 date of May of 1996, although the original EMS/AERO software
18 has been replaced with the ES&S Unity software package.

19 The Optech III-P Eagle is utilized at the precinct
20 level. The Eagle will return ballots that contain over
21 votes or under votes in any contest, including the second
22 and third choices, to allow voters to change, amend or
23 accept those votes. And after the polls close, the Eagle
24 would be capable of producing precinct results for the
25 first-choice candidates for RCV contests, as well as results

1 for all non-RCV contests. The Eagle will store the results
2 for the second and third choices on a memory device, but
3 they will not print those out on the precinct results tape
4 at the close of polls.

5 The Optech IV-C is a central count system and
6 that's utilized for absentee and provisional ballot
7 processing and some other ballots such as write-ins and any
8 anomalies that are seen at the polling place.

9 The Optech IV-C, in order to allow the RCV
10 capture, has been modified in terms of the software. The
11 Unity software, ES&S's, basically their suite of software,
12 and that's also been modified as a result of this proposed
13 system. Both the Election Data Manager and the Hardware
14 Programming Manager have been modified to allow the
15 identification of RCV contests. The Election Reporting
16 Manager has been modified to allow for the reading and
17 merging of RCV data, including manually entered data from
18 write-in ballots. It's been further modified to allow for
19 the application of RCV algorithms to that data, if it's
20 deemed applicable.

21 The RCV tabulation process in this system will
22 only be implemented in those contests covered by RCV which
23 are subject to what the charter specifies where there is no
24 majority, which is 50 percent plus one.

25 The printed ballot under this design is using the

1 basic format of the current Optech III Eagle ballot. It has
2 been modified to allow three choices for each RCV contest.
3 The ballot varies, you have a couple in your packet. It
4 does vary from one column to three columns in width. Each
5 column of the ballot consists of one or more contests, each
6 with one or more candidate selection positions, and if
7 applicable, RCV choices. The ballot may be printed on one
8 or both sides. The vender has recommended to the City and
9 County of San Francisco that they use separate ballots, one
10 containing races for RCV contests and one for non-RCV
11 contests.

12 The vendor has provided procedures which we have
13 looked at, they do conform to the basic template and format
14 as required by this office. As explained in the
15 recommendations section later on, there are some
16 recommendations that staff has that the vendor should be
17 required to add to certain sections of the procedures.

18 And in terms of testing, the Optech Eagle received
19 a NASED qualification number under BRC, as I mentioned, in
20 1996. The Optech Eagle IV-C that's used in San Francisco
21 currently was certified under California state rules when it
22 was owned by BRC. ES&S did submit source code for the
23 modified components of the Unity software to the federal
24 ITA, but not for the firmware changes, the Optech equipment.
25 The change to the hardware and circuit board on Optech Eagle

1 was submitted to Wyle Laboratories and basic environmental
2 testing was performed, but no software review nor functional
3 testing were performed on the specific hardware/firmware
4 changes by Wyle.

5 The Unity version 2.4.2, which is the baseline for
6 the RCV modifications, was recommended for final approval to
7 the EAC for NASED qualification on March 30th, 2004, and
8 has, itself, not been certified for use in California. The
9 version included necessary support for RCV processing but
10 required additional modifications to perform the RCV
11 functionality.

12 The testing performed for this report does not
13 extend to qualifying the use of Unity 2.4.2 in California,
14 but is limited to qualifying for the San Francisco RCV
15 election in November only.

16 The modifications to the Unity software were
17 submitted to Ciber for review and testing under the Voting
18 Systems Standards. The functional system testing was done
19 in conjunction with State certification testing performed
20 for this report. Software source code review and other ITA
21 review tasks were done based on the Voting System Standards
22 of 1990 and a report was prepared and was received by this
23 office. The testing and report will not result in a NASED
24 qualification number, as you are aware.

25 State testing in conjunction with the federal

1 testing was conducted at the vendor's facility in Rockford,
2 Illinois, on March 10th, 11th, and 12th. Both myself and
3 Mr. Freeman were there with the federal ITA laboratory
4 representatives.

5 You do have a list in your packet in terms of all
6 the modifications and the software changes. I won't
7 necessarily go into that unless one of you would like me to.

8 The specific testing that we did conduct in
9 Rockford included a witnessed build of the executable code
10 from the Unity source code patches that were submitted to
11 the ITA. And the witnessed build also included the firmware
12 for the Optech IV-C and Optech Eagle.

13 The tracked installation of the witnessed build
14 executables was also conducted. We did a verification of a
15 logic and accuracy test deck. A test run of a general or
16 primary election using the L&A test deck and basic
17 validation of the RCV algorithm was performed.

18 We also ran a special test deck to verify the
19 proper operation of the RCV algorithm involving a full set
20 of over votes, under votes, and write-in options.

21 An end-to-end testing was also completed, and we
22 created another database in order to do that, using various
23 and more scenarios.

24 A limited test volume test was done on the central
25 count location just to try to determine what the load

1 capacity was on that. And a review of basic design features
2 was conducted.

3 The changes to the existing system as we tested it
4 correctly performed the required operations under the RCV
5 algorithm defined by the San Francisco charter.

6 The observed problems that we did find during
7 testing included the audit trail. The record capture of the
8 RCV ballot is not a true image off the Optech Eagle design
9 or the Optech Eagle unit, but it's a ballot record and part
10 of the algorithm is applied or part of the logic is applied
11 at that point. The resulting record loses some information
12 from the actual voting ballot.

13 The RCV algorithm provides a display at each stage
14 once it's actually processed at the main location. If a tie
15 vote occurs, the operator has to specify the choice between
16 the tie contest. The final review is available as a printed
17 report which summarizes the results of each pass of the RCV
18 algorithm. However, the audit log only shows the algorithm
19 was used and none of the intermediate results are retained
20 for an audit record. Of special concern, no log record is
21 made of the operator intervention in deciding tie votes.

22 We did observe the tie block issue where all races
23 are processed together, even an independent contest. So if
24 a tie occurs in one contest, you can't obtain the results
25 for any of the other RCV contests until that one tie has

1 been resolved.

2 And no source code review has been performed on
3 the IV-C Eagle firmware. We ran through compliance with
4 state and federal laws and those are included in your
5 packets. You know, most of them we've covered already in
6 terms of the audit log being insufficient. We did raise
7 concerns about the one-percent manual recount that the
8 system doesn't provide for the definition of how recounts
9 will be performed in a way that is compliant with how
10 they're currently done. Staff has raised this as a concern,
11 however, the Secretary of State legal staff has advised the
12 system satisfies the requirements of the software
13 discussion.

14 The result of tie votes. Staff raised a concern
15 that the system does not specifically address how the tie
16 votes should be eliminated and it defers to state law. In a
17 previous system before you, there was confusion in terms of
18 which Election Code sections were applicable. We raised
19 that concern again. Again, Secretary of State legal staff
20 has advised the system does satisfy that requirement.

21 As I mentioned, federal testing was conducted. It
22 was tested but it cannot meet or exceed the standards,
23 therefore, it will not result in a NASED number, but we were
24 aware of that situation before we went into it.

25 Some other considerations for you in response to

1 the agenda being posted. We did receive 62 letters
2 encouraging approval of the system. Of those, 22 appear to
3 be a form letter, eight were letters that were sent to the
4 panel as a result of that previous application when San
5 Francisco issued their hand count application, and one
6 letter was received encouraging rejection of the system.

7 Staff recommendations, are you ready for those?

8 CHAIRPERSON KYLE: Sure. Before you do that
9 though, are the letters that you're referring to in this
10 binder?

11 MS. MEHLHAFF: They are in the briefing binders,
12 in the last half.

13 CHAIRPERSON KYLE: Okay. They're in the briefing
14 binders, but are these separated?

15 MR. WAGAMAN: Those are additional copies,
16 correct.

17 CHAIRPERSON KYLE: Okay. So is this part of the
18 62, or is this in addition to the 62?

19 MS. MEHLHAFF: That's the entire set. The
20 comments in the briefing binders, Michael went through and
21 basically, if they were form letters, he gave you one of
22 those to show you the example and notes how many of those we
23 got.

24 CHAIRPERSON KYLE: What I would like to do is move
25 those letters that we received into the record formally, and

1 I'm wondering if this is the body of documents I do that
2 with, or do I have to take that plus these and put them
3 together, or is this it?

4 MR. WAGAMAN: They are duplicates.

5 CHAIRPERSON KYLE: So this is the whole thing
6 here, okay. This will be entered into the record.

7 MS. MEHLHAFF: So staff's recommendations on this.
8 Staff recommends certification of the system with the
9 following provisions:

10 A. The RCV algorithm may only be used on a one-
11 time basis in San Francisco City and County for the November
12 2004 election.

13 B. The source code for the Optech III-P Eagle,
14 Optech IV-C memory pack, the intelligence device adapter
15 firmware must be submitted for firmware review to an ITA by
16 April 22nd and test results received by June 30th. The
17 review must include code that currently may be used to gain
18 unlawful control of the program, provides executable paths
19 to other code, and modifies other code or moves data/code
20 into an executable location.

21 C. Amend the system's procedures to require the
22 City and County of San Francisco to create a detailed audit
23 log to accommodate for the unacceptable audit log of the
24 software.

25 D. The RCV components may only be used with State

1 certified equipment.

2 CHAIRPERSON KYLE: Anything else to your report,
3 Ms. Mehlhaff?

4 MS. MEHLHAFF: No.

5 CHAIRPERSON KYLE: Thank you very much.

6 PANEL MEMBER DANIELS-MEADE: Dawn, I had one
7 question.

8 CHAIRPERSON KYLE: Ms. Daniels-Meade.

9 PANEL MEMBER DANIELS-MEADE: With respect to the
10 time, is it reasonable to expect that the ITA can perform
11 their review between April 22nd and June 30th and get a
12 report back to us? Is that reasonable?

13 MS. MEHLHAFF: Do you want to talk to that?

14 PANEL MEMBER DANIELS-MEADE: I don't know what the
15 timing normally is.

16 MR. FREEMAN: That is a little bit of a tough
17 question, because I'm not sure what their actual schedule
18 is. However, I know that they're very busy with testing a
19 bunch of different systems. Now, what we might be able to
20 do is not go forward, since this is not necessarily under
21 the 2002 VSS standards and request just a very specific
22 review like we've done in the past with one other system,
23 and that approach may be feasible or practicable. But it is
24 kind of a push to get it done by that time.

25 CHAIRPERSON KYLE: So, Mr. Freeman, you're

1 suggesting that if we just limit the specific request it
2 might expedite it moving through the pipeline of the ITA?

3 MR. FREEMAN: I can't comment to the schedule
4 right now, I have to qualify on that basis, but it's far
5 more likely to be done if it was done that way rather than
6 just turning it over.

7 CHAIRPERSON KYLE: And would that address those
8 outstanding issues that have to do with the firmware that
9 you've identified?

10 MR. FREEMAN: Yes, it would.

11 CHAIRPERSON KYLE: Okay. I'm interested in
12 hearing from the City in terms of the timing on that and
13 also from the vendor on the audit log.

14 So Mr. John Arnst.

15 MR. ARNST: Yes, thank you, Chairman.

16 As far as the timing, the June 30th date is late
17 for us. In the contract we signed with the vendor, May 10th
18 is the date we expect to have the system certified. And
19 we're planning our election on May 10th. We'll staff the
20 department around May 10th and we'll also do outreach
21 according to the May 10th deadline and also the testing. So
22 when I start to hear that June 30th is the date that
23 potentially we'll have a certified system in San Francisco,
24 it makes me very nervous, to be honest with you.

25 CHAIRPERSON KYLE: Mr. Freeman, can we get the

1 results back by May 10th, if they were submitted earlier
2 than April 22nd?

3 MR. FREEMAN: I really couldn't tell you on that,
4 we have to check with the ITAs to see what they have on the
5 schedule. I know they have a couple of really urgent high
6 demand tasks that they're trying to get done in the same
7 timeframe.

8 PANEL MEMBER CARREL: Can I ask a question, and I
9 don't know who can answer it, but why wasn't firmware
10 submitted with the software and the hardware when the
11 software and hardware was tested?

12 MR. FREEMAN: You will have to ask ES&S on that, I
13 don't know.

14 MR. ARNST: Last year when the system was first
15 being discussed with the City, June 1st was our date that we
16 used, and that was continually missed and we never actually
17 used the system for last November. So I don't really want
18 to repeat last year where we set a date in the future that
19 is too close to the election to begin with and have to hope
20 at that point that they will come together if it's missed
21 after June 30th. And I would like as much as possible to
22 have it done sooner rather than later.

23 PANEL MEMBER CARREL: With all due respect, you're
24 asking us for a deadline on something that at least as I
25 understand it we have no control. And I would like to hear

1 from ES&S, have they submitted the firmware at this point?

2 CHAIRPERSON KYLE: Come to the podium, please.

3 Please state your name and title too, please.

4 MR. TAGGARD: I'm Joe Taggard, the project manager
5 for franchise voting with Election Systems & Software.

6 In terms of a review by Wyle, the ITA that does
7 the hardware, we can't promise anything. We can submit the
8 information as quickly as possible in the request, but as
9 Mr. Freeman points out, that's based on Wyle's schedule. I
10 would say that the only change that was made to the Eagle at
11 this point involves the chip that resides in the memory
12 pack, Mr Freeman, that would be the APS chip. The HPS chip
13 didn't change at all. And I don't know where we stand on
14 the hardware assembly modification that will receive the
15 PCMCIA card. My understanding is that's an off-the-shelf
16 hardware item, but if that's not the case, I stand to be
17 corrected. So that's where we stood on that.

18 We're more than willing to do it, we just can't
19 guarantee any timeframe at all, sir.

20 PANEL MEMBER CARREL: I guess my question is, why
21 wasn't the firmware submitted with the software and hardware
22 for testing when it went through testing and, regardless of
23 the reason, you're saying that you can do it. Your client
24 is telling you that they need it by a certain date and I'm
25 understanding you still haven't submitted it.

1 MR. TAGGARD: Sir, our understanding was that we
2 had certification and we had a federal number on the
3 firmware that was in Eagle, and that all we had was a change
4 to one chip, and that after discussions we would be looking
5 at that and looking at that patch in the functional end-to-
6 end test in Rockford. If we misunderstood that, then that's
7 our fault. But we thought that information was being
8 covered.

9 We did what's called a witnessed compile and it
10 builds from scratch with the existing firmware for both the
11 Eagle and the IV-C, and then show the patch, you know, add
12 the patch on top of that as part of the witnessed compile,
13 and then went ahead and ran the end-to-end functional test.
14 If this is a source code review, we did a source code review
15 on the Unity some time ago. But as I say, we're willing to
16 do this, we just -- I don't think we understood we had to do
17 this. I'm not trying to make an excuse, we're glad to do
18 it, but if we misunderstood, then we misunderstood.

19 CHAIRPERSON KYLE: Can you submit it sooner than
20 April 22nd?

21 MR. TAGGARD: Absolutely. What we can't guarantee
22 you, sir, is the response time.

23 CHAIRPERSON KYLE: Can you submit it before close
24 of business tomorrow?

25 MR. TAGGARD: One, we have to check with and get

1 on the schedule with Wyle. I'll move as quickly as I can on
2 it, certainly, best efforts.

3 But I want to know exactly, sir, and I want to
4 know exactly this time so we never have to have this
5 conversation again, exactly what I have to do, because here
6 I stand before you once again.

7 PANEL MEMBER CARREL: Right, I understand.

8 And, Mr. Freeman, maybe you can clarify what needs
9 to occur or Ms. Mehlhaff can clarify what needs to occur,
10 what needs to be submitted and what type of testing needs to
11 occur on it?

12 MR. FREEMAN: Well, essentially, we're looking at
13 for the III-P, when we're talking about some of those
14 firmware chips, I need to go back and get some records, but
15 the information I have was in the documentation where more
16 than that one chip we're referring to was changed. And I'll
17 go back and verify that. But when we sent them to go ahead
18 and submit those changes for review, the firmware is
19 definitely a part of it, and if that means one, two or three
20 chips, the source of that firmware should have been
21 submitted and reviewed.

22 Unfortunately, one of the problems is we don't
23 have a baseline of the software review on the existing
24 system to even verify, as far as I know, whether the changes
25 are -- those are the only changes there or there are some

1 more. This makes it sound a little bit more difficult,
2 especially in terms of the Optech IV-C. It's nice to say
3 that we've got one of those two changes, but part of the
4 ITA's responsibility is to verify some sort of previous
5 baseline and there's no baseline available for that.

6 PANEL MEMBER CARREL: Can I move on to other
7 issues or stay on this discussion? I have a few other
8 issues --

9 PANEL MEMBER MOTT-SMITH: Dawn, can you clarify
10 for me, were there changes made to the firmware that would
11 require federal testing or qualification testing?

12 MS. MEHLHAFF: I think that might --

13 PANEL MEMBER MOTT-SMITH: This was not just
14 commercial off-the-shelf stuff, there were changes made that
15 anyone who sells voting equipment in California would know
16 require changes or require --

17 MR. FREEMAN: I don't know about the last
18 condition, but yes, there definitely was firmware changes
19 made in terms of the Optech III-P and what they call the
20 memory pack, and some of the hardware that supports that.
21 To what extent that equipment is going to be used in San
22 Francisco, maybe a point of clarification, and Joe Taggard
23 and I can talk about that later or the representative from
24 San Francisco, but we were shown a number of devices that
25 uses that, reads it and processes it, and one of those

1 devices did have a custom firmware chip and there's no
2 record of that firmware chip being tested and reviewed.

3 PANEL MEMBER MOTT-SMITH: And so, Mr. Taggard,
4 hearing what Mr. Freeman just said, why would you not assume
5 that would require federal testing?

6 MR. TAGGARD: Number one, I wasn't aware that
7 there -- the custom chip to which I refer I believe was on
8 the memory pack and the APS chip. My sense is is that the
9 chip that's on the Eagle is simply the -- what we're simply
10 doing it replacing the modem capability with the capability
11 of adding a PCMCIA card attached to a valid record of
12 franchise voting. Now, if we have a misunderstanding, here
13 once again, we'll certainly do whatever it is. But this is
14 off-the-shelf information. There was a discussion of what
15 we call a pick chip that went along with that assembly that
16 housed the PCMCIA card, but those are standard parts to the
17 best of my knowledge. And we sent those down to Wyle, we
18 sent that whole assembly down to Wyle, and they looked at it
19 from a hardware standpoint and an environmental. Evidently,
20 by not asking for the firmware at that point, we erred in
21 some way. But we're more than prepared to send the APS chip
22 down there right now to do that.

23 MR. DIDIER: My name is Lou Didier, vice-president
24 and general manager for Election Systems & Software. And
25 I've just confirmed that we will submit by close of business

1 tomorrow the firmware.

2 PANEL MEMBER MOTT-SMITH: Thank you.

3 MR. DIDIER: And we're looking at about two weeks
4 basically to get it in the queue and reviewed.

5 PANEL MEMBER MOTT-SMITH: I appreciate that, but I
6 don't feel any closer to the answer to my question. It's
7 either I'm not getting the information or asking the
8 question correctly, but essentially what I'm hearing you
9 say, Mr. Taggard, is that there wasn't anything within the
10 firmware that would normally require some qualification
11 testing, hold on just a second, and what I'm hearing from
12 the staff is that there were changes to the firmware that
13 would normally require qualification testing. And which is
14 it?

15 Can you respond first, Dawn?

16 MS. MEHLHAFF: It was our understanding when we
17 ran the testing that we were just looking at COTS equipment,
18 commercial off the shelf, and once we got there and started
19 looking at the documentation and testing, based on
20 discussions with Mr. Freeman and the technical consultant
21 with Ciber, which is the software ITA, there were changes
22 made to those components, and based on dialogue that we had
23 when we were at Rockford, one of their programmers did go
24 into discussions with us. So there were changes, they had
25 taken some COTS out and they made some changes to it. And

1 so that's where Steve's comments are deriving from is that
2 it started with the COTS, stuff which in and of itself, yes,
3 would not be subject to that code review, but then once they
4 made specific modifications to it, it now becomes a source
5 of review for the ITAs.

6 PANEL MEMBER MOTT-SMITH: And I don't want to
7 press it too far, but was that acknowledged at the time that
8 the testing was done by all the people who were there?

9 MR. FREEMAN: That's actually a very reasonable
10 question and thinking back on it, we had some discussions
11 about it. I asked a couple of times about whether they
12 submitted for testing and they kept telling me no. I didn't
13 go ahead and pursue it any further, but I did go ahead and
14 make specification that in the future it doesn't have to be
15 tested. That was something that was for you as to whether
16 we were going to come back or not.

17 CHAIRPERSON KYLE: Okay. So let me just see if
18 I -- we're being told now that the components that we're
19 talking about that are in question can be submitted by close
20 of business tomorrow. And then I'd like to redirect the
21 question back to you, Mr. Arnst, since you move up the
22 submission date by ten days, or giving them maybe the
23 benefit of doubt by one day, the 12th, which would be ten
24 days, then we moved up the date from June 30th to sometime
25 earlier, whether it would comport with the needs of the City

1 and County of San Francisco?

2 MR. ARNST: Well, most definitely. The sooner
3 that it is certified, the better it is for us. I understand
4 the certification process is not in the control necessarily
5 of the vendor or anyone here, but June 30th is to my mind a
6 date that is too late.

7 CHAIRPERSON KYLE: Okay.

8 PANEL MEMBER CARREL: Are there any other
9 questions on this issue?

10 CHAIRPERSON KYLE: Go ahead.

11 PANEL MEMBER CARREL: Okay. I want to ask the
12 questions about the tie vote issue, and just so I understand
13 it, I'm going to explain it and you're going to tell me
14 whether I'm right and so that I understand the issue, and
15 then we can talk about resolving it. When voters vote, they
16 vote on the top three choices, I understand, although the
17 charter allows them to vote on all choices, it also allows a
18 provision where they can just vote on the top three if the
19 system doesn't provide for it. And so if the system is only
20 allowing three choices, they vote on three, but there may be
21 five people running for an office. You then take the person
22 at the bottom who gets the fewest amount of votes, and if no
23 one gets more than 50 percent, take all their votes and
24 split it up among those who voted for the second choice.
25 And then let's say at that point that after sorting through

1 the algorithms you get number three and number four tied, so
2 you don't know who to remove there. Is that the issue?

3 MS. MEHLHAFF: That's one of the issues of the tie
4 votes, yes.

5 PANEL MEMBER CARREL: Okay. Do you want to
6 explain the other issues?

7 MS. MEHLHAFF: The other issue that we found
8 during testing, and it's just the system design. This is
9 more of a charter issue or a procedural issue in terms of
10 how do you resolve it.

11 PANEL MEMBER CARREL: Right.

12 MS. MEHLHAFF: Do you flip a coin, you know, how
13 do you resolve it. That's a procedural legal issue. The
14 system issue that we found during testing was let's say you
15 have Contest A and Contest B, completely independent of each
16 other, and in Contest B you have no ties, but in Contest A
17 your third and fourth candidates do tie. You can't produce
18 results for any of the other contests --

19 PANEL MEMBER CARREL: It's still second, third and
20 fourth for all of them until you can resolve the tie and
21 then you can move ahead for all of them?

22 MS. MEHLHAFF: Right. Well, it won't even show
23 you the result. You cannot produce a report that shows you
24 the results for those other contests that are independent of
25 that one race that has a tie until you have resolved that

1 tie.

2 PANEL MEMBER CARREL: Okay. And I guess I would
3 ask San Francisco this, is there a provision either in your
4 charter -- well, first let me ask the question, what's the
5 state law on how to address ties? You flip a coin, right?

6 MS. MEHLHAFF: Draw lots.

7 PANEL MEMBER CARREL: Pardon me?

8 MS. MEHLHAFF: Draw lots.

9 PANEL MEMBER CARREL: Is there something in your
10 charter with regards to the adoption when you adopted this
11 ranked-choice voting that addresses ties?

12 MR. ARNST: The tie issue defers to state law as
13 well.

14 PANEL MEMBER CARREL: The charter doesn't refer to
15 ranked-choice voting?

16 MR. ARNST: And the issue is not so much if
17 there's a tie for the top vote gathering candidates, but for
18 the candidates with the least amount of votes, if there's a
19 tie on that end. I don't know of the solution.
20 Procedurally, I can see how to resolve that, but legally, I
21 don't know what the answer is for it.

22 CHAIRPERSON KYLE: We have opinion from our in-
23 house counsel that from a legal point of view, the tie vote
24 issue only rises to the level of a procedural problem in
25 terms of certification.

1 MR. ARNST: Okay.

2 CHAIRPERSON KYLE: So let me ask you then on a
3 procedural point. Are you comfortable that that procedure
4 can be worked out either by you, by the vendor or in
5 conjunction with the vendor?

6 MR. ARNST: Well, since it's the vendor's system,
7 I want the vendor to take the lead in how the system is
8 developed. If we provide assistance and procedures, it's a
9 procedural issue and it's an important issue, we will, of
10 course, provide information and assistance in how to
11 procedurally resolve the tie issue.

12 CHAIRPERSON KYLE: Okay.

13 PANEL MEMBER CARREL: My concern and you probably
14 share it is that there be notice of that before election of
15 what happens in the case of a tie so that if a tie is to
16 occur and you handle it a certain way there's no controversy
17 over you should have handled it a different way. So I'm
18 just concerned that there needs to be a procedure in place
19 going ahead that everyone's aware of so that tie votes can
20 be handled and addressed in the same manner and in a proper
21 manner.

22 MR. ARNST: Yes. You're taking it -- your aspect
23 of the conversation is a little bit further along than where
24 I am and what I'm talking about. If we have candidates,
25 let's say the third and fourth candidate are tied and I can

1 see how to resolve that procedurally. Now when it comes to
2 the system stopping and not providing a report, I'm not
3 comfortable with that. I don't see that as making the
4 system successful for its first election, and I would prefer
5 to see actually the tie issue not stop the recording of
6 results altogether. I'm not comfortable with that myself.

7 PANEL MEMBER CARREL: So then I move back to you.
8 Is there a way to prevent ties from stopping, is there a way
9 around that that can be addressed or is this system sort of
10 stuck in that stop?

11 MS. MEHLHAFF: When we tested it and we asked that
12 question, if there was an alternative or if that's just the
13 way it is, and we were instructed during testing and we were
14 not able to see any alternative, that that's just how the
15 system is created, that's how the software was written and
16 set up.

17 PANEL MEMBER CARREL: So if you're drawing lots, I
18 guess at a certain point --

19 MS. MEHLHAFF: It gives you the option, it says
20 which candidate do you want to eliminate, Candidate A or
21 Candidate B. If you don't want to make the choice at that
22 moment because you have to do whatever you need to do in
23 order to resolve the tie, you're basically stuck on that
24 screen. You can't suppress it and say ignore this, we'll
25 come back to it later, give me the results for the rest of

1 the contests. You don't have that option.

2 PANEL MEMBER CARREL: Okay. And if that weren't
3 enough, let me ask you another question on another issue,
4 the ballot layout. And I'm concerned about the ballot
5 layout issue. I find it confusing and I think clearly that
6 voter education is going to be necessary to clarify for the
7 voters. And so do you have a plan in place for voter
8 education in general and on the ballot layout specifically?

9 MR. ARNST: Well, we do. We have a general plan
10 which once, after today's meeting we'll implement it more
11 and more as time goes on, and the style of the ballot will
12 affect our outreach.

13 PANEL MEMBER CARREL: That's all I have at this
14 point.

15 CHAIRPERSON KYLE: I'd like to move into public
16 testimony, unless there's some immediate questions.

17 Public comments I should say aside from the 62
18 that have been submitted.

19 Is Jim Barton here?

20 Hi, Jim.

21 MR. BARTON: Hi.

22 CHAIRPERSON KYLE: Long time no see.

23 MR. BARTON: It's been a while.

24 CHAIRPERSON KYLE: Jim and I went to law school
25 together.

1 MR. BARTON: I wanted to speak as a citizen in
2 favor of IRV. I think it's a system that will expand voting
3 as more people have candidates that they can identify with.
4 And I would encourage you all to look for solutions to the
5 problems here and I applaud the panel for being that spirit.
6 The system is a new system, but these problems are solvable,
7 and there's a growing demand for IRV.

8 Recently in Berkeley there was an election to
9 introduce IRV compatible systems and I believe it got 70
10 percent of the vote. And so more and more people, the more
11 they learn about IRV are looking for it to be implemented.
12 And while I'm not familiar with all the technical
13 intricacies of it, are looking for those that are
14 technically oriented to solve those problems and help it
15 happen.

16 Thank you very much for your work on this.

17 CHAIRPERSON KYLE: Thank you, Jim.

18 Caleb Kleppner.

19 MR. KLEPPNER: Caleb Kleppner, Center for Voting
20 and Democracy.

21 Mr. Chairman and Members of the Panel, Staff and
22 Public, it's been a long road to get here and I'm very
23 pleased that we're here today and that we've got an
24 application for addressing all the issues that are important
25 any time you make an election system change. And I just

1 wanted to make a couple brief points.

2 The first is that with the permission of the
3 Secretary of State, I had the opportunity to observe the
4 testing in Rockford, Illinois. And I want to applaud the
5 Secretary of State and the staff for permitting my presence
6 there. I think that sets a very strong precedent that if
7 you can bring the public more and more into the electoral
8 process, we're going to create more confidence among the
9 public in the results. So I think the fact that I did see
10 what was going on, write up a report about that, and put
11 that report on the website, and I have a copy here if anyone
12 is interested, strengthens this process that we're going
13 through today. So I want to give kudos for that process.

14 The second is that the ballot layout is clearly an
15 important issue, and in my report I suggested that there is
16 really two particular formats that are sort of viable with
17 the Optech Eagle. I suspect the side-by-side layout is
18 easier for the voters than the wrap around that is being
19 proposed, and since this application concerns the November
20 election, which only had one race on the IRV ballot, the
21 vendor had assured me that they can do either one of these
22 ballots. I mean it's just incumbent upon the public, the
23 City, the vendor, and the Secretary of State's office to try
24 to figure out which is going to be best, and that can be
25 done through a very -- a low tech way to hand ballots to

1 people in this room, for example, and say which one do you
2 prefer. And it may be obvious, if you had money and
3 resources and time you could use more sophisticated focus
4 groups. But it's a very simple question, and I suspect I
5 know the answer, but I would want to make -- I think public
6 policy should be made on the basis of empirical evidence.

7 The third thing is that with the tie question it's
8 clear that state law says how that should be broken, it's by
9 drawing lots, there's no option to the law for that. The
10 system is set up so that when it meets a tie, it stops, and
11 I observed this. At that point, the user, which is the
12 vendor working on behalf of the city, has to break that tie.
13 To do that legally, you bring the candidates together with a
14 five-day notice and so forth. So you're not going to break
15 the tie that instant when the system is run, but that
16 doesn't mean you can't choose one of those people to
17 eliminate and see the results and just ignore them in that
18 race. I mean you basically just take a piece of paper and
19 you cross out the election results from that tied race and
20 say we don't have results in this race, but we do have
21 results in these other two. So again, it's a procedural
22 question, if the vendor could rework the system, they might
23 well treat ties differently. But the fact is you can break
24 the tie either way, and I might even suggest you break it
25 all possible ways so you've got that out of the way, but

1 then you still use the other results until you've legally
2 broken that tie.

3 Finally, quite briefly, the Election Code calls
4 for a liberal construing of the approval of voting systems,
5 and I think what we've heard is that there are some issues
6 out there that haven't been dealt with concerning firmware
7 and other things that I'm not privy to. But the system
8 works, and so if we liberally construe the system, I think
9 you'll grant certification today. And if it is certified,
10 assuming that you complete these additional tasks, which
11 gives the city the green light to start their voter
12 education. So I would hope you would proceed in that
13 spirit.

14 Thank you.

15 PANEL MEMBER CARREL: Thank you.

16 CHAIRPERSON KYLE: Thank you.

17 PANEL MEMBER CARREL: To follow up on a comment
18 made by Mr. Kleppner, and it calls upon the ties, you said
19 it stops all other counting. Does it stop all counting on
20 just RCV elections or on all elections, even if they aren't
21 RCV elections?

22 MS. MEHLHAFF: The RCV application is separate
23 from non-RCV.

24 PANEL MEMBER CARREL: No, no. What I'm saying is
25 on tie votes. If you get a tie on the RCV election, and he

1 said there's only one in November, and that's happening, in
2 November does it stop the tabulation on non-RCV votes --

3 MS. MEHLHAFF: No.

4 PANEL MEMBER CARREL: -- or just on RCV votes?

5 MS. MEHLHAFF: It's just RCV. It does not impact
6 non-RCV races.

7 MR. FREEMAN: Just to try to clarify that. The
8 RCV resolution is a completely separate process from the
9 other race counts.

10 PANEL MEMBER CARREL: Okay.

11 MR. FREEMAN: So they can go ahead and complete
12 all the rest of the non-RCV races, actually including that
13 day's initial first-choice vote to see if they got the 50
14 plus one, and if that comes out, they don't even go under
15 the RCV procedures. But then after they do that or
16 independently of that, they go ahead and go under the RCV
17 procedures to resolve those particular races.

18 PANEL MEMBER CARREL: So at least this November it
19 wouldn't be an issue because there's only one RCV race?

20 MS. MEHLHAFF: Correct.

21 PANEL MEMBER MOTT-SMITH: Two points of
22 clarification.

23 CHAIRPERSON KYLE: Go ahead.

24 PANEL MEMBER MOTT-SMITH: John, is there one
25 office that is potentially subject to RCV provisions or is

1 it someone's guess that there's one that's likely to be
2 close?

3 MR. ARNST: Well, there are seven districts that
4 will have supervisors races this fall, there's actually
5 seven RCV contests in November, not one. As far as being
6 close, you know, I don't know.

7 PANEL MEMBER CARREL: So there are actually seven.

8 MR. ARNST: They are districts. So I mean I don't
9 know how the software works, but from my understanding if
10 you have a tie in one district's race, all district
11 information is not reported.

12 PANEL MEMBER MOTT-SMITH: My follow-up question is
13 in terms of the tied vote issue and following on Marc's
14 question, why procedurally could you not in advance of the
15 election define a process whereby you say if during the
16 counting procedure and any time during the counting
17 procedure you run into a tie vote, you will either, and this
18 is just an example, have representatives who are present
19 from each of the campaigns witness the toss of the coin, or
20 if they're not present, you will have a tie resolution board
21 of five people or whatever and you flip a coin and they
22 witness it and you move on fairly instantly. How would that
23 be difficult?

24 MR. ARNST: Theoretically that works, but once you
25 get involved in an election, people want to know the

1 results, they want to know if they won or if they lost, and
2 if you start putting sort of stretched out timeframes,
3 especially in San Francisco, it starts to make people think
4 about the elections process itself. If you can't do that
5 and if it comes down to it, we'll have no choice, of course,
6 because it's the system we have at hand, but ideally I would
7 like a system that we wouldn't have to stop the entire
8 election, to hold the election, if there was a tie in one
9 race. That to me becomes a little difficult to handle.

10 PANEL MEMBER MOTT-SMITH: Again, I feel like I'm
11 belaboring things today, but why would you define that as
12 stopping the election if at the end of a particular
13 iteration of the algorithm you had a tie? You stopped at
14 that point. You had a tie and you have a procedure in place
15 to flip a coin and it's witnessed by whomever and you move
16 on as appropriate. It doesn't seem like it would take
17 minutes or tens of minutes, it doesn't seem like much of a
18 delay.

19 MR. ARNST: It depends on the process that's put
20 in place and people feel comfortable with it, I agree.

21 CHAIRPERSON KYLE: Ramin Firoozye.

22 MR. FIROOZY: I'm going to pass.

23 CHAIRPERSON KYLE: Okay, thank you.

24 Steven Hill.

25 MR. HILL: Steven Hill with the Center for Voting

1 and Democracy.

2 It's nice to see you all again, and I want to
3 thank Secretary of State Kevin Shelley for getting us to
4 this point. It's been a long two years and here we are.

5 So I guess the point I would like to make at this
6 point is that there are some issues being raised and I think
7 everyone is sort of in agreement that they need to be
8 addressed. But what I'm hearing is that this certification
9 is going to be a one-time certification for San Francisco
10 only in November, and I would encourage you to not make it
11 so restrictive. You know, the equipment works, and I think
12 everyone is in agreement, the city, the vendor, the public
13 advocates, everyone, that we're all willing to work together
14 in a positive constructive way to deal with the issues that
15 have been raised.

16 But, you know, I can't help but reflect, I look
17 back to various Voting Systems panels, those previous, you
18 know, for instance, the Ink-A-Vote system that's being used
19 in LA County right now. It's never gone to federal ITA
20 certification, as far as I know. You know, other systems in
21 California. The Mark-A-Vote optical scan system, they
22 replaced a read head, a very crucial piece of equipment that
23 actually scans the ballot, and yet that read head never went
24 to a federal ITA testing.

25 And so I just can't help but come back and I'm

1 stuck on that somehow we're being treated differently, that
2 the IRV is different so there's a sense that we have got to
3 put this under more scrutiny, we've got to make sure they
4 dot their i's and cross their t's more than other
5 applications in other counties and other vendors and other
6 voting systems. And I would encourage you to not go that
7 route.

8 IRV is not that unusual, it's been used lots of
9 places. You know, ranked ballots are being used in Utah by
10 the Republicans for their primary elections and being used
11 in Louisiana for overseas ballots, and many places all over
12 the world. And it's not as strange as I think some people
13 are thinking that it is. If we have some issues, we can
14 resolve them. This certification should be for a system
15 that works, there should be no conditions, it should be
16 unlimited to the future. If other cities want to use this,
17 like Berkeley, Long Beach has had problems with runoff
18 elections there, they're talking about using this same
19 voting, they want a system they can use. And if this system
20 works, they should be able to use that system, they
21 shouldn't have to come back to you for their particular
22 application in their particular city.

23 And so I would really encourage you to resist sort
24 of being overbearing. I understand that there's been a lot
25 of issues raised in California recently and I applaud the

1 willingness of the Secretary of State in making sure our
2 elections in California are going to be beyond scrutiny and
3 that the public will have confidence in them and some of the
4 issues, touchscreen, CRVs and all these sorts of things.
5 But I applaud you for giving more scrutiny to it. But let's
6 not treat this differently than you do and have other
7 applications.

8 Thank you.

9 CHAIRPERSON KYLE: Thank you, Mr. Hill.

10 Rob Dickinson.

11 MR. DICKINSON: Hello, I'm Robert Dickinson and
12 I'm here from a group in San Mateo County for Electoral
13 Reform, and we started recently about two months ago.

14 And our group is very committed to using new
15 electoral systems like runoff voting to address the
16 significant issues that are facing our democracy today. We
17 have one of the lowest voter turnouts of the democratic
18 world and people just don't feel like their votes count or
19 that the system is working for them. And I think anywhere
20 IRV has been used, it provides a system that people can feel
21 comfortable with and gives them better choices and their
22 choices end up electing someone who's more representative of
23 the broad public.

24 And, you know, we've seen with the recall election
25 where good candidates are forced out in order to avoid this

1 boiler effect or where in the 2000 election people feel like
2 one candidate ruined the race because he had a different
3 point of view, and IRV addresses all of those things. So I
4 would urge you to take a constructive approach towards this
5 application and work towards resolving these issues. Again,
6 this is a system that works and these should be resolvable
7 issues.

8 In San Mateo County where I come from we use the
9 same voting system, the Optech, that's used in San
10 Francisco, and we're very much looking forward to having the
11 opportunity ourselves to have instant runoff voting in our
12 county. And we need for this Voting Systems Panel to help
13 that forward by approving this application for the Optech
14 Eagle, in conjunction with an IRV use. We hope that you
15 will not just approve it for a one-time use in San
16 Francisco, which, again, I feel is way too restrictive given
17 the quality of the system and the fact that it does work,
18 and these are resolvable issues. And I hope that you will
19 approve it unconditionally and for use statewide in all
20 elections where this voting equipment is in use.

21 Thank you very much.

22 CHAIRPERSON KYLE: Thank you.

23 Mr. Martineau. Pete Martineau.

24 MR. MARTINEAU: Hello, I'm Pete Martineau. I'm
25 from Sacramento and I am a member of the AARP State

1 Legislative Committee.

2 We voted to support the proposition in San
3 Francisco two years ago, and our legislative committee, I
4 briefed them on what ranked-choice voting is and what it can
5 do and we had a unanimous vote to support in San Francisco.
6 I'm also a vice-president, one of the vice-presidents of the
7 California Alliance of Retired Americans.

8 We voted in two years ago resoundingly and the
9 testing that is going on now and from reports it all went
10 very, very well with no glitches. So I would say that I
11 agree with Mr. Hill and the last speaker that we would urge
12 that certification be made of the equipment and work out the
13 problems later because the other systems had other problems
14 with new editions of hardware and weren't tested federally.
15 So this should be given the same outcome.

16 Other charter cities have evidenced interest in
17 ranked-choice voting, just as has been said. What a
18 smashing victory in Berkeley, 72 to 28. Let's let them as
19 soon as possible have a chance to use ranked-choice voting
20 by machine.

21 Now, we thank very much Secretary Shelley for his
22 strong interest and his leadership in election
23 administration improvement programs in California. He and
24 you have proactively helped the counties, vendors and others
25 involved to improve and tighten up their election security

1 and administration procedures.

2 Thank you very much.

3 CHAIRPERSON KYLE: Thank you.

4 Dave Kadlecek.

5 MR. KADLECEK: My name is Dave Kadlecek, I'm with
6 Californians for Electoral Reform. I am a resident of
7 Oakland.

8 Oakland is one of the cities that has enacted
9 charter language enabling the use of instant runoff voting
10 in some elections within the city, in Oakland it's just for
11 special elections to fill vacancies. And it's quite likely
12 that there will be some vacancies filled by special
13 elections in Oakland in the next few years, given that I
14 think all but two of the elected officials in the city are
15 planning to run for higher office at some time within that
16 period and some of them might win.

17 So it would be very important for us to see the
18 possibility of Oakland implementing IRV. The language in
19 its charter allows but doesn't require the use of ranked-
20 choice voting in special elections. There's been one
21 special election held since that charter language was
22 enacted and they did not use IRV because the equipment
23 wasn't there to support it. And so because of that, I'm
24 asking that you not adopt the Recommendation A from the
25 staff appointing this to a one-time only use in San

1 Francisco. If there are some particular things about San
2 Francisco's implementation of IRV, that the testing was only
3 for that, possibly limit it to things whose implementation
4 of instant runoff voting is similar enough to San Francisco
5 that that's not even applied, and don't make it one time
6 only and don't make it so that it's only the City and County
7 of San Francisco.

8 On a separate matter, I guess procedural things,
9 it would have been good to have a staff report and other
10 supporting materials for this issue available to the public
11 ahead of time, and I would hope that on future Voting
12 Systems Panel meetings like the one in two weeks on the
13 Diebold issue and stuff that the supportive materials will
14 be available in advance of the meeting to the public.

15 Thanks.

16 CHAIRPERSON KYLE: Thank you. Duly noted.

17 Bob Sheppard.

18 MR. SHEPPARD: Good afternoon, my name is Bob
19 Sheppard and I live in Berkeley. And as a few speakers have
20 said, we overwhelmingly passed IRV enabling legislation.
21 Berkeley has spoken, it wants IRV, and we need a system that
22 will allow us to conduct IRV elections. And the only system
23 that's been submitted is this ES&S system. So I would urge
24 you to approve it.

25 I listened to the technical comments that were

1 made and I'm a software engineer and systems integrator, and
2 unfortunately I didn't have an opportunity to look at the
3 staff report and the supporting documentation, so I was
4 unable to even formulate an opinion until what I heard right
5 now. And I haven't really heard anything that would justify
6 limiting the approval of the system to either one election
7 or to one jurisdiction. There were some issues that were
8 raised that need to be resolved, but as far as whatever type
9 of approval you want to give to it, I don't think it should
10 be limited to an election or a jurisdiction. And if it's
11 not limited in that way, if Berkeley so chooses can use the
12 system to conduct their own IRV elections, should they
13 decide to.

14 So I would urge you to approve it unconditionally.
15 As far as the staff report that's been mentioned, I would
16 really encourage you to keep it an open process to the
17 public so that people can look at the material before coming
18 to these meetings and formulate some sort of intelligent
19 response.

20 That's all from me. Thank you very much.

21 CHAIRMAN KYLE: Thank you.

22 Charles O'Neil.

23 MR. O'NEIL: My name is Chuck O'Neil. I'm a
24 member of Californians for Electoral Reform and some other
25 organizations.

1 I'm not into all the technical details, but it
2 seems to me that we can work around these difficulties that
3 were pointed out. It's also clear to me that there's been a
4 lot of movement towards instant runoff voting. I would like
5 to see it adopted on a much wider basis.

6 In past famous elections where we have talked
7 about spoilers, and those are usually the presidential
8 campaigns and that sort of thing. Ross Perot perhaps
9 spoiled the vote for Bush and Clinton was elected with 40
10 percent of the plurality, for example, as well as the Nader
11 example.

12 I think it's very undemocratic and not right that
13 we be electing officers based on a small pluralities. We
14 should require a majority. And if we require a majority of
15 the vote, then the spoiler effect goes away. And one of the
16 obstacles to having a majority vote is the need for runoff.
17 But now we have a system that can do it immediately so we
18 don't have the expense and the trouble of going through more
19 campaigns and more elections.

20 So I think this is a system that is going to be
21 coming and it will be coming statewide. I would like to see
22 it and I will be working to get it adopted in Sacramento
23 when I can and I would like to see this system approved for
24 everybody to use.

25 Thank you.

1 CHAIRPERSON KYLE: Thank you.

2 Jim March.

3 MR. MARCH: I'm actually not going to take up much
4 of your time. My first point is that I'm actually in favor
5 of instant runoff voting myself. Second, I have concerns,
6 of course, over firmware that hasn't been tested and similar
7 security issues, as you well can imagine.

8 The thing that scares me the most and here in the
9 staff report is this idea that the ES&S system is basically
10 an optical scan system, it can print out ballot images. Now
11 this is something we're seeing glimpses of over in the
12 Diebold world and we're still investigating. But we're
13 getting rumors that some of the optical scan Diebold
14 counties are printing out ballot images based on
15 regurgitating them basically and then counting those ballot
16 images as part of the one percent required recounting. If
17 that's true, then the one good thing about any optical scan
18 system, whether it's ES&S or Diebold, is the fact that
19 you're leaving a good paper trail behind that can be checked
20 against the machines.

21 So what I would like this panel to do in
22 processing this application is to require that ballot images
23 or anything even remotely like them not be printed out. The
24 one-percent manual recount must be based on the physical
25 paper that the voters are marking to signify their choice of

1 who's going to govern them. Require going back to the
2 voter's paper, not some regurgitated semi paper trail thing
3 coming out of the central count system. I believe this
4 panel should make that a requirement of this system. I
5 really hope you do. And it will set a good precedent in the
6 Diebold world.

7 Thank you very much.

8 PANEL MEMBER CARREL: Thank you.

9 Dwight Beatty.

10 MR. BEATTY: Hello, I'm Dwight Beatty. I'm a
11 retired election official from Santa Clara and Sacramento
12 Counties. I was Registrar of Santa Clara when instant
13 runoff was passed in 1998 when there wasn't a system that
14 could work it.

15 I think the IRV system can work. I would just say
16 looking at all the concerns throughout the country about
17 various voting systems and the testing and what's going to
18 be tested ahead of time, I would urge you to certify this
19 for one election only and then see how it works out. You're
20 doing it for the first time on a large scale in California
21 and probably in the United States on a large scale, and this
22 is going to sort of set the pattern for what's going to
23 happen for other cities that want to use it like Berkeley or
24 others. And they should come back after the November
25 election and say this is what happened and go ahead and

1 certify it and others can use it, or it has problems and you
2 straighten it out.

3 Thank you.

4 PANEL MEMBER CARREL: Thank you.

5 CHAIRPERSON KYLE: Thank you.

6 Mr. Beatty submitted his card, he was probably
7 coming in a little bit late. We're glad we had your
8 comments.

9 Is there anyone else who did not get a chance who
10 wants to speak on this point? Seeing that there is one hand
11 raised over here and another hand over here.

12 PANEL MEMBER CARREL: Please fill out the cards.

13 CHAIRPERSON KYLE: Why don't you come up, Ms.
14 Alexander.

15 MS. ALEXANDER: Good afternoon, Kim Alexander with
16 the California Voter Foundation.

17 I still have a question about the staff report
18 that was given and the issue about the manual audit capacity
19 of the primary system. It sounds like there's maybe two
20 issues, one is whether the ES&S software maintains an audit
21 log that's secure. I've heard that that issue has arisen in
22 a few other states as well, so I think we need to find that
23 as an important issue, and I'd like to hear more about what
24 the specific problems are with the audit log.

25 And then separately, there's the manual recount of

1 the paper ballot issue. And I think given the important
2 role that the one-percent manual recount plays in verifying
3 the accuracy of software counted vote totals in any voting
4 system, that we have to make sure that the one-percent
5 recount will still work with the IRV system. So I'm
6 concerned about some of the things that Mr. March said and
7 I'm just wondering if there's additional information about
8 the specific nature of those audit problems with that
9 system.

10 So those are my questions.

11 CHAIRPERSON KYLE: Okay. Great, thank you.

12 MS. WEST: My name is Ann West. I always feel a
13 little nervous when I come up. My name is Ann West and I
14 live in San Bruno and I work in San Francisco.

15 I have been doing research about the company
16 itself, so I'm interested in the history of the company
17 itself and thought I would just comment a little bit about
18 that because we're all interested in transparency and
19 ensuring honesty I'm sure in every election, even though in
20 theory the idea of instant runoff is a good one, it's a good
21 theory. But in the March 2nd primary in Indiana, just
22 looking at some of the recent things that I discovered, the
23 state of Indiana has called upon ES&S because it had
24 uncertified software during that primary and is trying to
25 get ES&S to post a large bond to ensure that the next

1 election is not similarly compromised. I know that happened
2 in Alameda with Diebold.

3 And then I'm very interested in what happened to
4 Janet Reno in Miami, because when she was running for
5 Governor, in the primary ES&S software acted very strangely
6 in the counties where she got the most support. She was
7 ahead 30 to 40 percent in the primary during the campaign
8 before the primary election, but in some precincts the
9 touchscreens did not boot up until late in the morning and
10 other precincts it was found that each machine had to be
11 started in sequential order and took up to 23 minutes to
12 start. Furthermore, it was discovered that when all the
13 touchscreens were turned on at the same time in one
14 precinct, for some reason the ES&S touchscreen machines shut
15 down in other parts of the county.

16 And let me just mention one other thing and it's a
17 little bit more political but it's relevant. What is most
18 commonly known about ES&S is that from 1993 to 1994,
19 Nebraska Senator Chuck Hagel was the CEO, a Republican was
20 the CEO of ES&S which counted 85 percent of the votes for
21 his election. It is perhaps less known that Hagel was the
22 past president of American Information Systems which counted
23 the votes in his first election, which he won even though
24 according to the polls he had only the support of about 20
25 percent of the voters against his opponent, the former

1 governor who had over 60 percent of the vote of support for
2 this election that ES&S ran. And the company, whose
3 president of another company, Business Records Corporation,
4 combined to form ES&S after his first election, and they
5 counted both the first and second election, and then he won
6 by a landslide so he refused to recount.

7 The other thing I would like to point out about
8 this company is that it was founded by the very same person
9 that founded Diebold, he's still working there, he's the
10 president of Diebold. These are not uniquely separate
11 companies. These kinds of things are relevant and in order
12 to keep our system above board, it seems to me that there
13 has to be more research about this sort of thing, rather
14 than just kind of wholeheartedly showing enthusiasm for an
15 idea. There is so much at risk and I sure hope that these
16 sorts of things are taken into account in the future.

17 CHAIRPERSON KYLE: Thank you very much. Would you
18 mind just filling out one of these cards so we have your
19 name for the record?

20 Great. Any others? Going once, going twice.

21 All right.

22 PANEL MEMBER CARREL: May I make a motion?

23 CHAIRPERSON KYLE: Let me ask a question for
24 clarification because I couldn't find it in the report here.

25 Is the application that's before us strictly for

1 San Francisco?

2 MS. MEHLHAFF: Yes, it is.

3 CHAIRPERSON KYLE: That's what I wanted to know.

4 PANEL MEMBER MOTT-SMITH: Is it strictly for the
5 November election?

6 MS. MEHLHAFF: No. But it's specifically for the
7 City and County of San Francisco municipal election.

8 CHAIRPERSON KYLE: Okay.

9 PANEL MEMBER MOTT-SMITH: I guess I would kind of
10 dispute that, and I don't have the paperwork in front of me,
11 but maybe the vendor can clear this up. But it is my
12 impression, both in writing and verbally, that application
13 is for a one-time use November '04 in the City and County of
14 San Francisco.

15 MS. MEHLHAFF: The application is for the City and
16 County of San Francisco. When the vendor came back and said
17 that they could not receive qualification on the RCV
18 components, that's when the discussion occurred that if we
19 granted an exemption for the qualification number that it
20 would be a one-time use only, and that was in agreement at
21 that time, it is not contained in the original application.

22 CHAIRPERSON KYLE: I want to go back to the audit
23 log for a second. Part of the recommendation and I'm
24 contemplating modifying, yes, Mr. Arnst, if you wouldn't
25 mind coming up and we may need testimony as well or

1 comments, is to amend the systems procedures to require the
2 City and County of San Francisco to create a detailed audit
3 log to accommodate the unacceptable audit log of the
4 software. And to go to your question, Ms. Alexander, my
5 understanding is that the audit log, it isn't a matter of
6 security, it's a matter of, and transparency is probably not
7 the right word, but it doesn't document every single --

8 MS. MEHLHAFF: It does not capture significant
9 events, including operator intervention.

10 CHAIRPERSON KYLE: My understanding from what you
11 said earlier, Mr. Arnst, is that you prefer the onus of
12 developing those procedures to fall onto the vendor rather
13 than to the City?

14 MR. ARNST: Correct. I mean it's their system and
15 they're comfortable with it and they know how it operates
16 far more than we do. Again, if we can provide assistance,
17 we will, and if we need to be involved in this matter we
18 will, but when it comes to developing the system itself, I
19 would prefer the vendor had the responsibility.

20 CHAIRPERSON KYLE: Could ES&S speak to that,
21 please?

22 MR. TAGGARD: Yes, sir. I'm Joe Taggard.

23 We'll certainly do that. One of the things about
24 the ranked-choice voting process per se is that it occurs in
25 what we would all look at as a post-election environment.

1 While the Department of Elections has asked that they be
2 able to run the algorithm at any time throughout the
3 election process, it's not until after election night that
4 you even have any idea of whether or not we have a clear-cut
5 winner or a majority. And anybody who knows the City and
6 County of San Francisco knows that we have probably the
7 highest amount of returned absentees to the polling place,
8 as well as original ballots, I would say proportionately of
9 any voting jurisdiction in the United States. So there are
10 anywhere from twenty-five to fifty thousand uncounted
11 ballots sitting out there for counting throughout the
12 canvass period.

13 Once again, it's a policy matter for the
14 department as to whether they want to go ahead and run the
15 algorithm. But the algorithm itself really can't be run
16 with any certainty at all until all the vote totals have
17 been certified. I'd like to point out that in doing a --
18 Mr. Freeman suggested we do a volume test to see how long
19 the algorithm took to run and we simulated 440,000 ballots
20 and we ran the algorithm on three races simultaneously and
21 it took about nine minutes. And that was simulated, of
22 course, for staff, I mean we didn't have 400,000 ballots
23 there. But we had run five or six thousand, then we just
24 went ahead and redid those sets and went ahead and processed
25 them.

1 Also in terms of the manual one-percent recount,
2 the manual one-percent recount means that if you take a
3 permanent record of the cast ballot, which is an optical
4 scan ballot, and you count it by hand, versus the total what
5 the machine generated. So there is never -- in our
6 procedures there is never any incidence where we simply
7 would use a ballot record, as opposed -- there are not
8 ballots, but an RCV ballot record to do anything but verify
9 the one-percent manual recount. So I really want to clear
10 that point up for everybody. And we spent a lot of time
11 talking about that and our solution for the recommended
12 solution for the manual one-percent recount I believe is
13 extraordinarily viable and will certainly determine if the
14 system is operating correctly.

15 Other than that, if you have any other questions
16 of me. We'll certainly work on the auto log to make it
17 acceptable. But again the RC data process itself is a
18 stand-alone process separate and distinct from the balance
19 of the election. And only our applying the algorithm
20 against those races that don't have a majority. And so
21 while we might have seven races, five of them could be
22 determined by 50 percent plus one vote and only two get the
23 algorithm. So you have to look at that type of environment
24 also.

25 Thank you.

1 CHAIRPERSON KYLE: Thank you.

2 Are there any other questions from the panel?

3 Marc, you said you make a motion?

4 PANEL MEMBER CARREL: Yes, I have a motion. I
5 would adopt the staff recommendation which includes the
6 following. The RCV modification will be used for a one-time
7 basis in San Francisco's November 2004 election, the source
8 code for the Optech III-P Eagle, the Optech IV-C memory pack
9 and intelligent device adaptor firmware must be submitted
10 for federal review by April 12th and testing results
11 received by June 10th.

12 CHAIRPERSON KYLE: I would move it up. I would
13 say May 15 or May 30.

14 PANEL MEMBER CARREL: Well, why don't we say May
15 30. May 30.

16 PANEL MEMBER MOTT-SMITH: Mr. Didier mentioned two
17 weeks I think for testing.

18 MR. DIDIER: Two weeks, depending on the ITA
19 schedule.

20 PANEL MEMBER CARREL: And what was San Francisco's
21 concern?

22 MR. ARNST: May 10th.

23 PANEL MEMBER CARREL: May 10th?

24 MR. ARNST: May 10th is a contractual agreement
25 and we're planning the election as one.

1 PANEL MEMBER CARREL: So why don't we say May
2 10th.

3 MR. ARNST: Very good, thank you.

4 PANEL MEMBER CARREL: May 10th. The review must
5 include the code that currently, one, may be used to gain
6 unlawful control of the program and, two, provides
7 executable paths to other codes, and, three, modifies other
8 code or moves data code into an executable location.

9 C. And this is the issue that the Chair brought
10 up, amend those procedures to require the City and County of
11 San Francisco to create a detailed audit log to accommodate
12 the unacceptable audit log of the software.

13 CHAIRPERSON KYLE: I would move to amend that to
14 require that ES&S create the detailed audit log and that
15 with the assistance of the City and County of San Francisco.

16 PANEL MEMBER CARREL: Okay. So that C reads that
17 the vendor must create procedures for the system to create a
18 detailed audit log to accommodate the unacceptable audit log
19 of the software.

20 D. The RCV components may only be used with
21 State-certified equipment. And I would add some other
22 items. One, that procedures be adopted prior to September
23 1, clarifying how a tie is to be resolved and procedures to
24 be adopted by the vendor in conjunction with the City and
25 County of San Francisco.

1 Six, that voter education is to begin once the
2 system is clearly intended to be used, that voter education
3 begins and a focus of voter education is on the layout of
4 the ballot.

5 And as an aside, going off the motion, this is the
6 ballot and I find it extremely confusing and the scroll
7 system, one, first choice, second choice, third choice. And
8 so Mr. Kleppner had proposed in his letter that some focus
9 groups or something be used to examine whether the other
10 suggestion by the vendor to lay out three in a row is
11 better. And I think that I would advise that, I won't put
12 that in the motion, but I would advise the City and the
13 vendor to explore what is the best way and what eases voter
14 confusion.

15 And then last -- do you want to add? I was going
16 to talk about the one-percent manual recount clarifying, and
17 I know it's in the log, because you can't use ballot
18 reports. Just to clarify, you cannot use the ballot reports
19 for the one-percent manual recount, but use the actual
20 ballots.

21 And that would be my motion.

22 CHAIRPERSON KYLE: I would like to add a friendly
23 amendment that I'm not sure, is it voter education formally,
24 or is that just a recommendation or is that --

25 PANEL MEMBER CARREL: I would put as part of the

1 motion that voter education must begin as soon as possible
2 after the City and County knows that they intend on using
3 the system to try to provide as much notice and to ease
4 voter confusion. And a big part of that voter education has
5 to be preparing the citizens of San Francisco for the ballot
6 layout.

7 CHAIRPERSON KYLE: I would like to add that we
8 reassess the system after the November 2004 election for
9 viability on a go-forward basis within the City and County
10 of San Francisco and outside the jurisdiction of San
11 Francisco.

12 MR. ARNTZ: On the one-percent manual tally, we
13 use the cards as the basis for the one-percent manual tally
14 anyway, we don't use basis audit trail. And also on the
15 layout, the City, whatever is best for the voters, we're not
16 beholden or wedded to a particular layout on the ballot. So
17 it was our understanding that there could not be a ballot
18 that had the three column layout, but if there is a way to
19 do it and that's what the people prefer, that's great with
20 us. So I thought I would add that to your motion.

21 PANEL MEMBER CARREL: I wouldn't do it in terms of
22 what the voter prefer, but actually what eliminates
23 confusion, because I don't know that the voters are going to
24 necessarily have a preference either way. Basically it's
25 going to be they are shown a ballot and they're going to

1 either understand what they're doing or not understand what
2 they're doing, and that's going to end up with people at the
3 polls asking for help and all this is creating more problems
4 for you.

5 PANEL MEMBER MOTT-SMITH: Am I correct in assuming
6 that you are planning that ranked-choice portion of the
7 overall ballot in November be on a separate ballot from the
8 offices and measures that are not? Is there any possibility
9 that it would blend together so that you would have both on
10 a single ballot? Should we consider stating that they
11 should be separate ballots?

12 MR. ARNTZ: I mean at this point we want the race
13 to be on a separate ballot, it will make the process a lot
14 easier for everyone concerned. And I guess in my mind one
15 thing that would combine the ranked-choice contest on a
16 ballot card with any other contest would just be that it
17 would make us go to another card. Because in San Francisco
18 if we have multi-card ballots, and we've had four cards for
19 one ballot, and I guess in the future it could happen where
20 a ranked-choice contest might make us have an extra card
21 that would cost us about \$400,000 in expenses. But at this
22 point, we don't want to have it on a card with any other
23 race but a ranked-choice contest.

24 PANEL MEMBER MOTT-SMITH: I guess I would like
25 some discussion here whether it's necessary for us to think

1 of requiring that. And then, Mr. Kyle, I would like to
2 refine your addition to Marc Carrel's motion that the
3 Secretary of State observe the election and that the
4 Secretary of State, in conjunction with everybody involved,
5 prepare a report on the election.

6 PANEL MEMBER CARREL: I think that goes along with
7 the proposal to reassess at that point, so, yes, I guess we
8 would reassess based on the report from our own staff. I
9 have no problems making the motion.

10 CHAIRPERSON KYLE: Okay. Tony, you wanted to say
11 something?

12 PANEL MEMBER MILLER: My question is there is no
13 coming in on May 10th or May 15th or May 30th. I think we
14 should give maximum flexibility to the City and County. The
15 City and County now says it is not timely, but if it comes
16 in on May 11th and we condition certification on May 10th
17 and Mr. Arntz says, well, we can still do it on May 11th, we
18 would have a problem. Do we need to actually put a date in
19 there, Mr. Arntz, to make a decision that it's not done by
20 May 15th and therefore it cannot be done. I mean do we need
21 an actual date.

22 PANEL MEMBER CARREL: I would prefer a date, but
23 I'm fine with putting a June 30th date on there and letting
24 the City and County of San Francisco make the determination
25 of whether they're prepared to do it if it comes out on June

1 30th.

2 PANEL MEMBER MILLER: And that would work too.

3 Mr. Arntz, how would you feel about that?

4 MR. ARNTZ: Well, my comment is the contract
5 agreement with the vendor is to have things certified by May
6 10th and I would like to hold that date as far as our
7 planning is concerned. That was one problem we had last
8 year, you know, June 1st, June 30th, July 15th, August 15th,
9 we ended up in court and it was a very unpleasant
10 experience, I think for all the parties involved. I prefer
11 that we actually stick to the contract that we have with the
12 vendor, I think it guides the panel as far as the timeframe
13 to make this thing sort of viable to make where it can
14 happen this November. And so I would prefer that we stick
15 to the May 10th date.

16 PANEL MEMBER MILLER: Then let it be.

17 CHAIRPERSON KYLE: Karen.

18 PANEL MEMBER MOTT-SMITH: Does anybody have any
19 feelings about the separate ballot issue?

20 PANEL MEMBER MILLER: My feelings is let San
21 Francisco work that out, I don't think that we need to.

22 PANEL MEMBER CARREL: I'm just looking at the
23 ranked-choice voting ballot and it looks like you couldn't
24 even fit other races on here given that you have two races
25 with ranked-choice voting on one page.

1 And is this the actual size of your ballot?

2 MR. ARNTZ: Well, I think it depends on the race,
3 but, yes, it can be a big size. It depends on how many
4 candidates there are and how the ballot is formatted on the
5 card. I mean I think I can almost promise you this fall
6 that it will be by itself, I don't see us combining it.

7 PANEL MEMBER MOTT-SMITH: Well, it does concern me
8 because we are required to make a finding that the system
9 does not compromise accuracy, security, integrity, or
10 interfere with the voters' ease and convenience in voting.
11 And it would seem to me that if you had one set of
12 instructions on one piece of paper for one set of candidates
13 and a separate set of instructions on the same piece of
14 paper for another set of candidates, that that would be
15 confusing. So if I'm the only one who's concerned about
16 that --

17 PANEL MEMBER MILLER: I think your point is well
18 taken. I still think that we should allow San Francisco to
19 make that decision, we should not micromanage at that level.

20 PANEL MEMBER CARREL: Well, maybe we can urge
21 instead of require.

22 CHAIRPERSON KYLE: There you go.

23 PANEL MEMBER MOTT-SMITH: If you're not interested
24 in it at all, we can leave it there.

25 CHAIRPERSON KYLE: I think it's a legitimate

1 concern.

2 PANEL MEMBER CARREL: We're urging you.

3 MR. ARNTZ: I note you're urging.

4 PANEL MEMBER CARREL: We would add to the motion
5 then that we urge the City and County of San Francisco to
6 prepare separate ballots for ranked-choice voting races, and
7 I didn't phrase that very well.

8 CHAIRPERSON KYLE: We got it.

9 PANEL MEMBER CARREL: You got it, okay.

10 CHAIRPERSON KYLE: But just to restate it, I
11 believe we have one, two, three, four, five, six, seven,
12 eight conditions. Is that what the record states?

13 A and B. Modified by date of April 12th and May 10th.

14 C. Modified to read amended systems procedures
15 requires ES&S in conjunction with the City and County of San
16 Francisco.

17 D, E. The vote procedures be developed by September 1
18 for a tie vote.

19 F. Having to do with voter education regarding ballot
20 layout.

21 And G. Reassess the system after November 2004 with
22 the Secretary of State's office having active observation
23 and writing a report.

24 And then H. Urging the City and County and the vendor
25 to create a ballot that is separate for RCV votes versus

1 non-RCV votes.

2 MS. MEHLHAFF: There was one more in there that
3 said to clarify that a ballot image or a ballot record could
4 not be used for a recount, the actual ballot. And it
5 occurred that they use the actual ballot, so I don't know if
6 you want that in or out, but that was originally part of the
7 motion.

8 CHAIRPERSON KYLE: Okay. That prohibits the use
9 of --

10 PANEL MEMBER CARREL: Ballot records from being
11 used for one-percent manual recount.

12 CHAIRPERSON KYLE: Okay. Any seconds?

13 PANEL MEMBER MILLER: Second.

14 CHAIRPERSON KYLE: All those in favor?

15 (Ayes.)

16 CHAIRPERSON KYLE: Any objections? Any
17 abstentions?

18 The ayes have it.

19 And if someone will type that up in a coherent
20 fashion.

21 Okay, let's take a 60-second break.

22 (Thereupon a short recess was taken.)

23 PANEL MEMBER CARREL: We have one more item of
24 business. Let's move back to it. And as far as I know, I
25 don't have any items, do any of the other members? So it's

1 simply public comment, so when the Chair returns the three
2 people who requested to speak in public comments are Jim
3 March, Michael J. Smith, and Maureen Smith.

4 MR. MARCH: Take mine off.

5 PANEL MEMBER CARREL: Okay, Jim March is removed.
6 Okay. Michael J. Smith, Maureen Smith and Dennis Paull.
7 And anyone else who wishes to make a comment on other
8 business, please provide us a card or else these should be
9 the only comments.

10 CHAIRPERSON KYLE: Is Mr. Smith here? Michael
11 Smith.

12 MR. SMITH: I'm sorry.

13 CHAIRPERSON KYLE: It's okay. We are giving you
14 three minutes. There is no item on business, so this is an
15 opportunity to just download and give us your thoughts for a
16 few minutes. If you have something written, that's great.

17 MR. SMITH: Yes. It's a letter.

18 My name is Michael Smith, Santa Cruz County.

19 And as we're seeing more and more interest over
20 the voter verified paper trail, we're getting information
21 from other people in the county. And I have a letter that I
22 gave copies to each of you and would like entered into the
23 record from Joyce Eden in Cupertino, California, which is
24 Santa Clara County. And I'm not sure I will be able to get
25 through the entire letter, but if I'm not, I would like the

1 entire record entered into the record.

2 CHAIRPERSON KYLE: It's entered into the record.

3 MR. SMITH: "Dear Secretary of State Shelley. If
4 computerized electronic voting is to be used in any precinct
5 in California, I ask that you implement a voter-verified
6 paper printout ballot as the only way that I as a voter can
7 have confidence that my vote will be counted as intended.

8 "In the process of educating myself on
9 computerized voting, researching the issues and
10 implications, I have become convinced that computerized
11 voting is not necessary as a methodology, is an unnecessary
12 extra expense to taxpayers, and is not a valid method of
13 ensuring an accurate vote count. I therefore urge that
14 another method of vote registering and counting be made
15 available.

16 "One method could be the Scantron in which the
17 voter draws a line, not fills in an oval, to indicate their
18 choice. That would at least have a paper trail. In the
19 primary election, I voted absentee and was given such a
20 ballot. However, I now realize that a voting method in
21 which there is a paper on which the voter registers their
22 choices, has in their hand to verify, and then puts directly
23 into a ballot box, and is then counted by actual people, see
24 the MIT report, is by far the best, and based on my
25 research, the only method which would give me confidence

1 that my vote will be counted as I intended.

2 "Along with the public transparency during the
3 actual vote counting with public monitors from each
4 political party and public monitoring of any ballot boxes
5 moved from the location of the voting booth to another
6 location to be counted.

7 "Until I can have confidence that my vote will be
8 counted as I intended, I will continue to turn in an
9 absentee ballot. This takes away my ability to participate
10 in an important public institution, voting with my neighbors
11 at the precinct in my neighborhood. In a previous election,
12 I was shocked to be handed a plastic card at my polling
13 place and to find computerized electronic voting machines.
14 How can I know what is encrypted on that card? This is not
15 transparency at all. And when I questioned the black boxes,
16 I was shown a printout that purported to demonstrate that
17 the machine had been checked to see if there was -- there
18 were no votes on it before the election. That printout
19 means nothing. A printout is not necessarily what is in the
20 machine's software before the election nor is it necessarily
21 related to what will be counted after I vote. I turned
22 around and left the polling place."

23 I would like to have the rest of the letter
24 entered into the record.

25 CHAIRPERSON KYLE: The whole letter will be

1 entered. Thank you.

2 We're going to have Maureen Smith go.

3 I'll just mention that folks interested in
4 commenting on a verified paper audit trail, there's been a
5 draft voter verified paper audit trail standards posted on
6 the web and we welcome comments. So if you want to do that,
7 the period is open through I believe the middle of next
8 week, we're considering extending it.

9 MS. SMITH: It's been moved, though. It's not
10 where it was, I don't know where it is now. I downloaded it
11 a week ago and I went back to find it again and it was gone.

12 PANEL MEMBER CARREL: I believe if you go into the
13 webpage under elections, and then there's all those little
14 icons. Press on Ad Hoc Touchscreen Task Force Report and
15 it's on that page. Another way to do it is --

16 MS. SMITH: Oh, it was on your page before. It
17 was on your page for this committee.

18 PANEL MEMBER CARREL: Oh.

19 MS. SMITH: But now it isn't.

20 PANEL MEMBER CARREL: Or on the home page, it says
21 Touchscreen Directives, press on that, I believe it will
22 take you right to it.

23 MS. SMITH: Great, thank you.

24 I was asked to read something into the record and
25 I would like just to not read it, hand it as I just did to

1 Mr. Wagaman and just say that I feel it's not necessarily
2 appropriate for the committee because it deals with one
3 particular registrar of voters and their behavior. So you
4 will see it, but I'm not going to take my time reading it.
5 And it's from someone who would have been here to speak for
6 themselves if the meeting hadn't been changed two times. He
7 did want me to say that it's really hard for a working
8 person to get off work, this person is from Riverside
9 County, and plan to be here and have the meeting changed,
10 not once but twice. So he could not make it. And he's
11 hoping he can make it to the next meeting.

12 I have three questions from the last meeting and
13 one statement. The questions from the last meeting regard
14 procedures and also an audit of all the remaining 41
15 counties to establish a baseline. Has the audit of the 41
16 counties taken place? We are very much concerned that it's
17 not just Diebold but all of the voting that is being
18 audited.

19 CHAIRPERSON KYLE: We're in the process of the
20 audit and we hope to have it by the next VSP meeting. In
21 fact that was our target.

22 MS. SMITH: In two weeks, three weeks?

23 CHAIRPERSON KYLE: Yes. Yes. Our target was the
24 end of the month and it looks like we're going to beat that.

25 MS. SMITH: Great.

1 CHAIRPERSON KYLE: And so we're optimistic. And
2 in terms of moving the meeting, let me just say that we
3 moved the meeting for two reasons, and I completely want to
4 acknowledge the difficulty of accommodating schedules. But
5 one is we need to do our testing and that's dependent upon
6 us receiving the testing from the independent testing
7 authority at the federal level. We just didn't have it in
8 our hands until last week. And so we were going to have a
9 meeting on March 30th and there was nothing to discuss.

10 Likewise, there was an attendance record issue
11 with regard to yesterday, and we wanted to be able to have a
12 quorum today in order to move forward. We could have held
13 the meeting yesterday, we wouldn't have had a quorum and
14 nothing would have happened. And, in fact, Ms. Daniels-
15 Meade came in on her vacation today to ensure a quorum
16 today.

17 MS. SMITH: I hope she gets an extra day.

18 PANEL MEMBER DANIELS-MEADE: So do I.

19 CHAIRPERSON KYLE: She does get an extra day.

20 So we're very sensitive to that and if somebody
21 has to lose out --

22 MS. SMITH: I was asked to say this, you know, and
23 I can understand why meetings, you know, do get rescheduled.

24 CHAIRPERSON KYLE: And the audit we hoped to have
25 done earlier but the March 2nd election interfered, and

1 going in and saying, hey, we want to look around the
2 machinery.

3 PANEL MEMBER CARREL: Well, we sort of expected an
4 election on March 2nd.

5 MS. SMITH: Oh, that little thing.

6 CHAIRPERSON KYLE: And they said get out of here.
7 So that was part of it.

8 MS. SMITH: The other two items have to do with
9 procedures that were discussed at the last meeting. One was
10 kind of general procedures, and I believe, even though I
11 have the minutes, they are very challenging to get through,
12 I didn't read the whole thing. But one was on general
13 procedures that weren't quite complete, I believe, and that
14 we would have access once they were complete, the public
15 would have access to these procedures. I don't think this
16 was the procedures that we're talking about on the paper
17 trail. So I am still interested in where that stands.

18 And then there were procedures, in particular to
19 the one we had at Santa Cruz, the Mark-A-Vote system, and I
20 was told that they were going to go up on the web or I can
21 call Mr. Wagaman or get in touch with staff and get a copy
22 of those. So I did e-mail Mr. Wagaman and I don't think it
23 was clear to him what I was asking for and I e-mailed back
24 again, but I didn't hear from him the second time. So I'm
25 wondering where do we find the procedures. Are there any of

1 these procedures that are posted on the web? And since the
2 other procedure was approved by you last time, and that's
3 like two and a half months, can we get a copy of those
4 procedures for the Mark-A-Vote.

5 PANEL MEMBER CARREL: You're talking about the
6 procedures that accompany the voting system once the voting
7 systems are approved, procedures on how to use the voting
8 system?

9 MS. SMITH: Yes. I'm not sure what the other
10 procedure item you had on your agenda last time was because
11 the discussion was around them not being completed. There
12 was a procedure item all by itself on the agenda and then
13 there was procedures for the Mark-A-Vote.

14 MS. MEHLHAFF: There were two voting system
15 procedures.

16 CHAIRPERSON KYLE: Let me just interrupt here.
17 Ms. Smith, right?

18 MS. SMITH: Yes.

19 CHAIRPERSON KYLE: You're not sure. Are you
20 asking about a specific procedure? It sounds like you're --

21 MS. SMITH: I'm asking about the general
22 procedures that I thought was a major item on your last
23 agenda. And in the specific procedure, which you did vote
24 on and it passed for the Mark-A-Vote.

25 CHAIRPERSON KYLE: But you're not sure what that

1 is?

2 MS. SMITH: I haven't seen it yet.

3 CHAIRPERSON KYLE: Okay. Can you tell us the
4 specific procedure you mean relative to Mark-A-Vote.

5 MS. SMITH: It was just some new procedures for
6 Mark-A-Vote. That's all that it said on the agenda.

7 CHAIRPERSON KYLE: We can look into that.

8 MS. SMITH: Is it something that they can e-mail
9 me? Because you do state in here that it's going to be
10 posted on the web.

11 CHAIRPERSON KYLE: I don't know if we post
12 procedures for every voting system.

13 MS. SMITH: No. But some other procedures that
14 were discussed. I'm sorry, but this was so much -- just a
15 huge document this time.

16 CHAIRPERSON KYLE: It helps if you're specific
17 though, because if you're not sure what procedures you're
18 talking about and I'm not sure of what procedures you're
19 talking about, we're going to take a lot of time trying to
20 figure that out.

21 MS. SMITH: Well, yes, and you can't do it right
22 now. So what I should do is e-mail the agenda back to you
23 and mark up what it said on the agenda.

24 CHAIRPERSON KYLE: Why don't we do this. I'll
25 direct the staff to get you the Mark-A-Vote procedures

1 through e-mail or hard copy, whichever is the easiest for
2 both parties, and then you figure out what other procedures
3 you're exactly interested in and get it to us and we'll --
4 if you're talking about procedures internally, the only
5 thing I'm thinking of that may be part of the discussion,
6 those are still a work in progress.

7 MS. SMITH: It might be. This was probably --

8 CHAIRPERSON KYLE: I'm not sure what you're
9 talking about so it's a little hard to address it.

10 MS. SMITH: Okay. I'll read more carefully.

11 CHAIRPERSON KYLE: Thank you.

12 MS. SMITH: Oh, one last thing. I had the
13 wonderful opportunity and experience of testing a new voting
14 system in San Jose the first of April, and it's a very
15 inexpensive system that can be used with almost anybody's
16 hardware. It was a great experience. I tested it as if I
17 were a blind person, not using my eyes at all, and it was
18 fantastic. I hope it comes before you sometime in the near
19 future. And it's Open Voting Consortium, it's a nonprofit,
20 and they do have open source code. And I can verify that it
21 was great up to the point of having the votes counted
22 after -- they were counted, my votes were counted, and I can
23 get the information back on any other device that I needed
24 to.

25 But anyway, thank you.

1 PANEL MEMBER CARREL: We look forward to seeing an
2 application for that system.

3 MR. MARCH: A quick thing. Is the panel going to
4 make available on the web the staff report 24 hours prior to
5 the next meeting so we can professionally prepare for the
6 hearing rather than come in and be surprised.

7 CHAIRPERSON KYLE: We're going to try. We had
8 hoped to do this this time as well, and like I said, we
9 didn't receive the Ciber report until last week, so we were
10 kind of jammed on time in producing things.

11 MR. MARCH: We would really appreciate if you
12 could.

13 CHAIRPERSON KYLE: We set this hearing in order to
14 try to facilitate things, which is kind of backwards from
15 what he normally do, which is make sure we have everything
16 lined up and then set a hearing.

17 PANEL MEMBER CARREL: So to answer your question,
18 it is our intent.

19 MR. MARCH: Okay. Try, all right, it really helps
20 our participation.

21 CHAIRPERSON KYLE: Dennis Paull.

22 MR. PAULL: Thank you. Dennis Paull from San
23 Mateo County and the Commonweal Institute.

24 I was rather concerned a short time ago to hear
25 the sort of relationship between San Francisco and their

1 vendor described as it's their system, rather than having
2 San Francisco say it's our system. And I think that this is
3 something that is perhaps a problem across the state that
4 particularly for smaller counties, but maybe for most
5 counties, that there's an over dependence of the county
6 staff on support from the vendors, and I find this quite
7 disturbing.

8 And I think that somehow or another the state
9 needs to find ways to help the counties gain the expertise
10 needed so that they can consider these voting systems their
11 own. I think, you know, there's a kind of a vision that I
12 have of the fact that the counties kind of just let the
13 vendors do their own thing and that results essentially in a
14 privatized election system. And if the counties don't have
15 the expertise to provide not only oversight, but actually
16 run the elections with maybe only a little bit of support
17 from the vendors, then I think that's opening ourselves up
18 to some rather serious concerns. I'm not quite sure exactly
19 how to implement such a thing, but I think it's something
20 that really needs to be addressed.

21 CHAIRPERSON KYLE: Okay. Thank you.

22 Do I hear a motion to adjourn the meeting?

23 PANEL MEMBER DANIELS-MEADE: So moved, being the
24 one on vacation.

25 PANEL MEMBER CARREL: Seconded.

1 CHAIRPERSON KYLE: All those in favor.

2 (Ayes.)

3 CHAIRPERSON: Thank you everyone. Thank you
4 staff.

5 (Thereupon the meeting of the Voting
6 Systems Panel was concluded at 3:05 p.m.
7 on April 8, 2004.)

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1 CERTIFICATE OF SHORTHAND REPORTER

2 I, MICHAEL J. MAC IVER, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein; that
4 I reported the foregoing Voting Systems Panel proceedings in
5 shorthand writing; that I thereafter caused my shorthand
6 writing to be transcribed into typewriting.

7 I further certify that I am not of counsel or
8 attorney for any of the parties to said Voting Systems Panel
9 proceedings, or in any way interested in the outcome of said
10 Voting Systems Panel proceedings.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 20th day of April 2004.

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18 Michael J. Mac Iver
19 Shorthand Reporter
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